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HIGHER LAW

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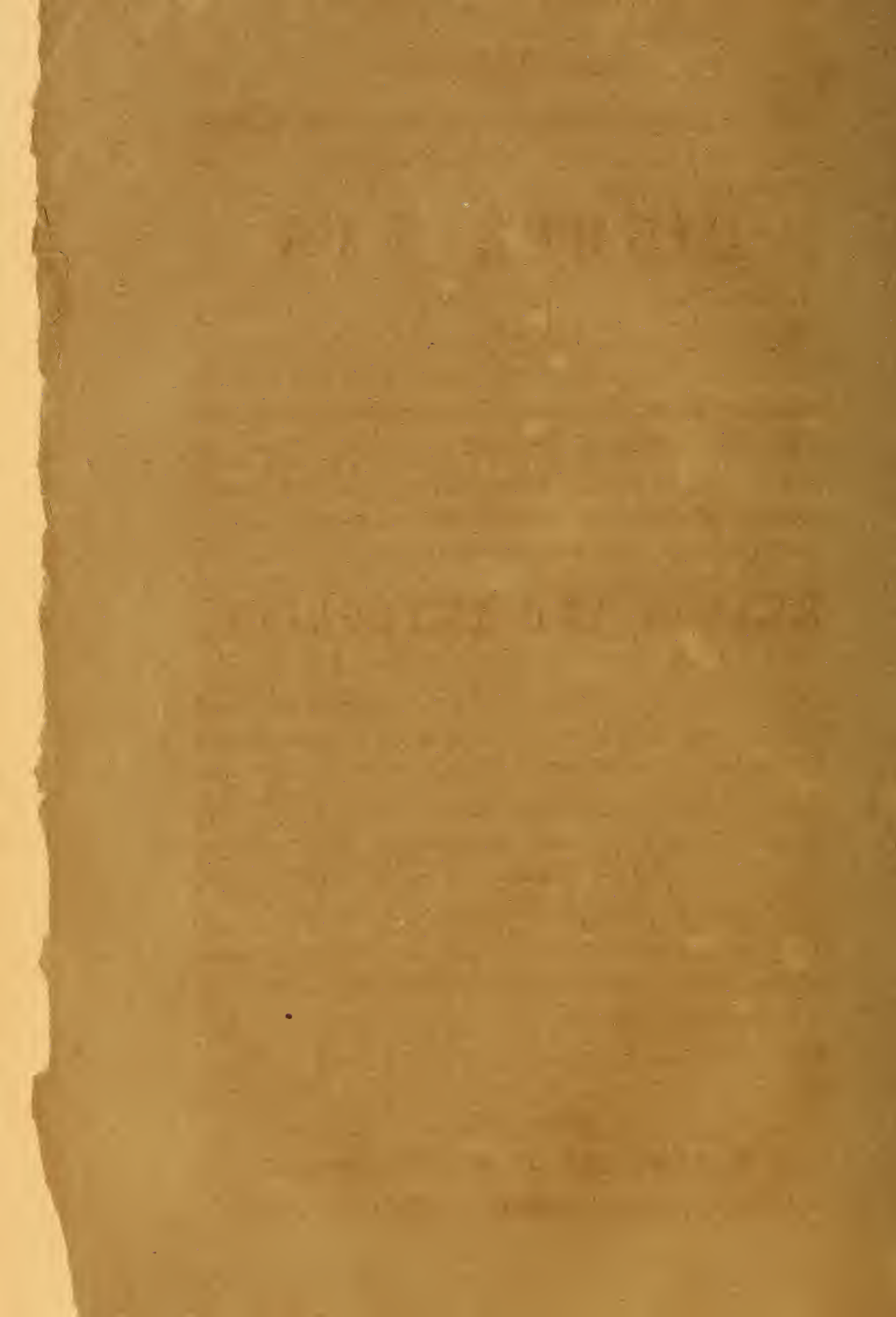
REASON AND AUTHORITY.

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Discite Justitiam moniti, et non temnere Divos.

NEW YORK:

S. W. BENEDICT, 16 SPRUCE STREET.

1851.



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PREFACE.

THIS publication is anonymous. If the principles which it aims to establish are true, they need no man's name to give them warrant; if they are not true, then the author will best subserve the cause of truth by remaining nameless.

His only motive in investigating the subject of this essay, has been to discover the truth for himself; and having become satisfied in the progress of his inquiries, that the views here advocated were capable of being placed on impregnable grounds, and seeing no attempt hitherto to do it in a thorough and systematic manner, he has determined to place this result of his labors before the public.

No higher merit is claimed for it than the endeavor to look at the subject fairly and fully, and to judge it from every point of view. All that he has seen written on this side of the question has lacked comprehensiveness,—one writer pursuing only the moral, another the constitutional, and a third the Scriptural argument. An attempt is here made to collect the scattered threads of reasoning and make them converge to one common centre; with what success the reader must judge.

Whatever may be thought of the conclusions herein arrived at, the discussion of them at this juncture, cannot fail to be opportune. While the author is personally indifferent to the reception of his work, and leaves it to gather dust upon the shelf, or make its mark upon the town, as the time may send, or the trade-winds may blow, he has an abiding faith in the triumph of the principles it maintains. He here casts his morsel of bread upon the waters, assured that it will return again, though after many days.

THE HIGHER LAW.

AMONG the topics which at present occupy the public mind, there is one which stands prominent as a question of commanding and absorbing interest to every citizen. We refer to the ground and the extent of the obligation of obedience to law.

Men are drawn to this subject by a triple cord of duty, of passion, and of interest; it is a question of politics and of ethics, of expediency and of justice, of conscience and of law; it covers the whole field of human society, and of Divine Government; it embraces principles which overrun the narrow limits of neighborhood and of race, and take in the broad scope of humanity; it respects alike, temporal obligations and eternal justice,—the ordinances of men, and the will of God. It involves the duty of millions, and the rights and liberties of thousands of our people.

It is not surprising that a question reaching so far as this should move men so powerfully as we see it doing. It is no wonder that you hear of it at every corner, that you read of it in every book and newspaper. Congress and Legislature are full of it; their resolutions and counter-resolutions are

shot across the land on the lightning's wing, awakening everywhere the intensest interest. Elections hang trembling in the balance, awaiting the rise or fall of the new idea ; Conventions meet to defend or to denounce the law ; preachers from their pulpits—leaders of the people, yet always following—proclaim the Higher Law, or recommend the lower ; editors of the press—sure straws to indicate the blowing of the wind—bend to the popular current, and fancy that 'tis they that blow the breeze ; every lecturer, be his subject what it may—theology or geology, Mahometanism or slavery—feels himself bound to bring in the all-absorbing theme ; it is agitated in clubs and coffee-rooms, in the cars and on the steamboats, in the street, the store and the market-place ; everywhere where men go, goes with them this inevitable idea, of the conflict between the Rights of Conscience and the Obligations of Law.

For this effect, there must be somewhere an adequate cause. However it may be with individuals, it is certain that communities never cry out unless they are hurt. It is needless to remark that the present prominence of this question has grown out of a quite recent act of legislation. But the principle involved is not new ; and it may not be amiss, passing for the present all immediate reference to the Fugitive Slave Law, to take a calm survey of the general principle of the Obligation of Human Law.

Let us first inquire what is the ground whereon

this obligation is founded ? To find the foundation of any law, we must go back to the law-making power, to the source whence it emanated, namely,—government. It is the function of government to make laws and to provide for their execution. If, then, the authority of a law rests primarily on the authority of the government that made it, we are next to inquire, whence comes the authority of the government ?

Of all theories of government, that one which derives its authority from God, seems now to be pretty generally abandoned. The doctrine of the *Divine right* of government, whether lodged in king or commons, finds little favor in any enlightened nation at the present day. But since it has lately been re-asserted from the pulpit, and by a portion of the religious press, it may be well to remark, that this theory must assert one of two things: either first, that God divinely commissions all governments equally, or else that he has specially invested some one government with Divine authority. The last of these suppositions, it is obvious, cannot be maintained, for whatever may be thought of the government of the ancient Hebrews, it is manifest that no *theocracy* anywhere exists in modern times. The first supposition will be found equally false, since, if God divinely commissions all governments alike, then he is found to be the author of oligarchy in one nation, democracy in another, and tyranny in a third ; and is made moreover to sanction, in case of a successful

change of governments, both the revolution which overthrows the rulers, and the oppression which is overthrown.

No government, then, can borrow authority for its acts from God. Neither does it inherit its authority, since nobody pretends, in this country at least, to believe in the doctrine of hereditary right. Neither has government any *inherent* authority, in and of itself, since all government must have had a beginning, and some power outside the government must have started it at the first. The only remaining source of the powers of government is the people. And this brings us to the principle which will form the nucleus of what we have to say, viz.:—THE ONLY FOUNDATION OF LAW IS PUBLIC OPINION. All government is but an intermediary between the public opinion and the law which it demands. We may, therefore, push aside the government and deal with the primary power of which it is but the agent.

Now, to show that the only actual foundation of law is public opinion, it is only necessary to consider, that no law which public opinion does not justify can be executed. To every man who knows what *democracy* means, it is evident, that in one way or another, the people in a democratic government must rule. Any law, interpretation, or decision, be it of the nature of common law or statute law, State or federal, legislative or judicial, which public opinion condemns, is thereby set aside, and virtually made void. Attempts may be

made to execute it, and a prevalent idea of the sacredness and supremacy of the law may render it for a time superior to public opinion; but if it be opposed to the sense of the people, the instances of its observance will be outnumbered by the instances of its violation; they who keep it will be few, and they who break it will be many; the courts will be wise enough in their generation to administer it after the popular will; by one subterfuge or another, or by open disobedience, the law will be circumvented; it will become superfluous because it is generally disregarded, and then repealed because it is superfluous; and all this for the plain and sufficient reason, as true in the laws of nations as in those of nature, that the stream can rise no higher than the fountain, that it is the people at last which makes and unmakes the laws, which "rules the rulers, and judges the judge." It is useless to talk of the supremacy of the law, when we know that the people only are supreme. Any other view is at once seen to be preposterous, since it makes a piece of parchment of more value than a nation of men.

Nor can this point be evaded by saying that the people, by its authorized agents, having made the law, it partakes of the supremacy of the people, and is, in fact, the same thing as the people. It is a plain fact that there is a large body of laws on the statute book of every people, which are practically and notoriously void. They are so for many reasons. Take a few examples.

There is a law on the statute book of South Carolina, unrepealed by the authority that made it, requiring every male citizen, under penalties, to go to church well armed. Now this law was the result of a temporary necessity, but is now rendered obsolete by the lapse of time. Still, it is statute law,—supreme law,—and the courts are legally bound so to declare it, and so to administer it, and yet the first attempt to enforce it would be met by an opposition as irresistible as it would be just. Here is a law which is rendered void by the Higher Law of public opinion, which refuses its execution because the occasion for which it was made has ceased to exist.

There is a Law of the Legislature of Pennsylvania, yet unrepealed, prohibiting all the citizens of the State from paying out notes of foreign Banks, of a less denomination than Five Dollars. Yet no attempt was ever made by the people of Pennsylvania to observe it,—beyond perhaps the first few months of its taking effect, and it is now universally disregarded. Here is a law made void by the Higher Law of public opinion, grounded on a business necessity which imperatively demands free-trade in money.

The Revised Statutes of Massachusetts contain laws, supposed to be “in full force and virtue,” prohibiting, under heavy penalties, all betting upon elections; yet if one were to reckon the sums staked upon any Presidential canvass, from the tens of thousands in State street, to the uni-

versal "hat" or "boots" throughout the country towns, he would very likely conclude that public opinion regards *so slight* a violation of the statute against spending money foolishly, as no very heinous crime.

Many States have attempted to enforce laws against the traffic in intoxicating drinks. Such laws have been passed, and after strong and repeated efforts, with all the machinery of government to back the law, have fallen to the ground null and void. However good and desirable these laws might be in their effects,—if carried out,—it cannot be gainsaid that they have been defeated by a Higher Law,—by a public opinion which feels that the mere physical appetite of drinking cannot justly be controlled by civil law.

Thus we might go on, citing instance after instance to prove, that there are some laws which are ridiculous, and fall to the ground by the Higher Law of common sense ;—some laws which are obsolete, and are defeated by the Higher Law of human progress ;—some laws which are inconvenient and are overruled by the Higher Law of necessity ;—some laws which are unnatural, and are null by the Higher Law of instinct and of nature ; and some laws which are *unjust*, and are void by the Higher Law of conscience and of God.

But it may be argued, that in saying that many laws are not obeyed, we have not said all, and

that the mere fact that they *cannot* be executed, is no evidence that they *should not* be.

If they cannot be executed, because defeated by public opinion, one would say that there is at least no remedy,—since we have already shown that the sole foundation of law is public opinion.

But the true answer to the question lies deeper, and brings us to state the ultimate fact in this matter, viz.:—that *as the actual foundation of all law is public opinion, so ITS SOLE SANCTION IS ITS REASON AND JUSTICE*. And here lies the real question between the opponents and the advocates of the Higher Law doctrine; the former assert the binding obligation of all laws, just or unjust,—the latter deny the obligation of all unjust enactments.

The ground of this denial may be thus stated. Justice is the Supreme Law of the universe. It is synonymous with the Law of Nature, and means the same thing as the Will of God. All men are bound, by the very fact of their existence in the constitution of nature, to obey its laws in preference to all others. It is each man's primary duty to do what is right, and to avoid what is wrong. There is such a thing as Natural Right; there is a distinction between right and wrong anterior to Human Law. To prove this, it is only necessary to say, that were there no justice, there could be no law; were there no natural and necessary distinction between right and wrong, the law which recognizes the distinction would never

be made. No law can create right, or make wrong. Its function is merely declaratory of the right and wrong which previously exist. The law is not the foundation of justice; justice is the foundation of the law. He who asserts the contrary, turns the universe upside down, puts the cause for the effect, and the effect for the cause.

If what has been said is true, then Justice is higher than the law; and if Justice is higher than the law, then no *unjust* law has any sanction whatever, and obedience to it is wrong. Now it is well known that many unjust laws do get enacted; some by hasty legislation,—some by violations of the constitution,—some by the legislators personally misrepresenting the people,—and a few,—(though these are among the rarest),—by a public opinion which is itself wrong.

Here, then, we have an unjust law enacted, and it calls on us for obedience. Now one of two things must be done; either we must yield implicit obedience to the law, because it is law, thus violating the duty we owe to reason and justice, to conscience and to God,—or else we must disobey the unjust law, and take the consequences. Our action in this dilemma will depend very much on the circumstances of each case as it occurs.

If the law in question be one of the absurd or obsolete kind, then the injustice of it is grounded on its unreasonableness, and the chances are that it will not be pushed to extremity, and no one

will be reduced to the alternative of disobedience. However men may theorize, it will be found in practice, that some sentiment of justice is natural to man ; and public opinion will much sooner violate its own law, than push to the extremity the unreasonable or supererogatory enactments which are found on the statute book. I know it is often said that "the law is the perfection of reason ;" but most lawyers, and some who are not, know that a more absurd falsehood was never uttered. If the converse of the maxim were true, and the perfection of reason were always law, there might be some rational hope of always getting justice done. The law books are not wanting in cases of this kind, where laws have proved in practice wholly inoperative, because not founded in reason or necessity. And this fact alone is a sufficient confutation of the notion of the *sacred supremacy* of the law. Law, no more than government, has any Divine right, or any inherent authority. It is always amenable to the reason and public opinion that made it. A senseless statute is no very sacred thing, and to say that all laws are sacred and supreme, because they are laws, is a kind of logic which it is charitable criticism to call absurd. Law is at the best, a temporary expedient,—reason is a perpetual force ; law is artificial,—common sense is natural. That our fathers stultified themselves, is no reason why we should,—and the Egyptian law, requiring men to eat garlic in worship of the cats, though both "sacred" and "su-

preme," was not very rigidly observed by their posterity.

Again, if the law in question be simply inconvenient, or if it deprive one of no natural right, or violate no man's conscience, though subjecting him to pecuniary or other disadvantage, it is generally best to obey it,—that is, provided public opinion insists on its enforcement. Of this class are many laws regulating pecuniary matters, and those actions which are in themselves indifferent, *i.e.*, neither right nor wrong. But even in this case there may be a stern and overruling necessity which renders obedience impracticable,—as in the case of a business pressure, where a breach of the laws regulating interest may be absolutely necessary to save hundreds of men from ruin.

Again, the law regulating the sacredness of human life may be overruled by the higher necessity of self-defence. A spontaneous instinct in every man tells him that self-preservation is the Higher Law, and if he take the life of his antagonist to preserve his own, most juries will suspend the law of manslaughter in his favor.

But in the last place, the law in question may be so plain a violation of natural right, so direct an outrage upon justice, or humanity, or both, as to take away all its obligation from the start, and in fact to oblige us to its disobedience.

Let us look at a few instances.—Nobody will pretend that a law commanding murder would be binding for a moment,—and the reason is plain,

that such a law is a subversion of all the plainest dictates of nature and morality.

Nearly all legal writers are agreed that all *immoral* laws are *ipso facto* void. Any law against chastity, of whatever nature, so far from binding a man to obey it, makes it his duty to break it at every hazard,—since man's virtue is his very self, and each one has a natural right to protect the morality of him and his against whatever power.

Any law restraining the freedom of speech or of the press is void. The human mind knows its rights, and sooner or later it will have them,—if not by law, then in spite of law. It is needless to quote arguments in proof of so plain a thing. Every man feels his right to say what he thinks, and the government which cannot stand against the most perfect liberty of speech, must be either very wicked or very weak.—So also, the laws prohibiting profane swearing, however moral in their tendency, are yet contrary to natural right, as the universal disregard of them sufficiently shows.

Any law restricting men from one kind of religious worship, or compelling them to another, is void. God allows no human statute to come between him and his creatures. Under whatever government a man may live, all experience and reason prove that the rights of conscience are reserved, and no law can for any length of time put fetters on the free will of man, or make him believe what in his soul he feels to be false.

So any law suspending the sanctions of human

brotherhood is void. No enactment can prevent me from helping or sheltering, feeding or clothing a fellow-man who has not forfeited his claims by committing a crime. Any attempt to enforce laws against kindness and hospitality is as vain as it is wicked. Talk of prohibiting humanity by statute, of putting fines on charity, and penalties on pity! Such laws may be made, but they will never be obeyed, until common humanity is obliterated from the heart, and human nature itself abolished.

So, also, any law compelling me to aid in enslaving or re-enslaving a man, is void. No law can possibly bind me to do that to another, while innocent of crime, which would be unjust and cruel, if done to myself. I cannot be bound to aid in robbing another of a natural and inalienable right. I cannot be made to commit injustice and cruelty by statute. There is no just distinction between the obligation of such a law, and that of a law commanding murder, which all will agree is void. My neighbor's right to liberty is as inalienable as his right to life. It is just as sacred, just as inviolable, just as precious; it is equally a natural right with the other, and until he forfeit it, by interfering with another's liberty, nothing can take it from him. To take his life is not a higher crime than to take his liberty, since he may rather choose to die than be made a slave. Patrick Henry's sentiment, "Give me liberty, or give me death," is at once seen

to be fatal to the obligation of a law which compels me to aid in taking the right to liberty away.

It is no answer to this to say that our fathers contracted for us that we would do this, and that the contract is binding. Suppose our fathers had contracted for us that we would stone every Catholic who came amongst us, or return in irons every fugitive escaped from the Algerines, *that* contract would be binding, would it? Some one may answer that there is no analogy between the cases, since one-half the nation made a bargain with the other half, and founded the Constitution upon the bargain, and exchanged considerations, and we have received our *quid pro quo*. But we have *not* received it, in point of fact; it has been denied us over and over again; Charleston and Mobile put our citizens in dungeons in open defiance of the Constitution and the "bargain;" and if *they* do not keep the compact where it is just, why should we where it is unjust and inhuman too? But if you say that one breach of it cannot justify another, and that the Constitution does positively promise that these fugitives shall be re-enslaved, and the Union is founded upon it, and will go to pieces if it isn't done, then we answer, Be it so,—grant that the Constitution promises to re-enslave them, it does *not* promise that you and I shall make scoundrels of ourselves to do it. We will give no more than is nominated in the bond. If the southern Shylocks must have their pound of flesh, and no considerations can move them to

be merciful, then they must be content with "only justice and the bond." The bond does not require the freemen of the north to turn slave catchers; they may preserve their manhood and still keep the bond; *that* crowning infamy was reserved for the law of Congress of the year of grace 1850. The law of Congress makes it the duty of "all good citizens" to aid the *posse*, if called upon by the Marshal, in binding and delivering back the fugitive; but the Constitution gives Congress no power to compel the citizens to do anything of the kind. Let the law of Congress execute itself by the proper officers, and not call on the people to do its dirty work. Because the Constitution says that fugitives shall be re-delivered, it does not follow that you and I must re-deliver them. Because the law says this man must be hung, it does not follow that you or I must be made to hang him, let him deserve it never so richly. The law of Congress may perhaps find *some* northern men willing to be "disinterested villains;" but "all good citizens" will keep on their way, and leave the Marshal and the *posse*, and the Shylocks, to their own peculiar calling.

'Tis curious to consider how plainly this law of Congress contradicts another, passed when the nation had fewer men, but larger souls than now. It is not difficult, on the Statute Book of the United States itself, to find a Higher Law than this passed last year. By the law of Congress, of March 2, 1807, it is piracy and murder—crimes

punishable by death,—to enslave a man on the coast of Africa; yet here is another law of Congress compelling you and me to *re-enslave* every man we find on any coast of America! Strange anomaly that right and wrong should be reversed by longitudinal degrees, that crime should depend on climate, that what is illegal piracy and murder in Africa, should be legal duty and obligation in the United States! Tell us not that to send a man back to slavery is by no means so bad as to *make* him a slave at first;—by every standard of reason and right it is infinitely worse. In the one case, there may seem some small excuse,—and, no matter how flimsy, it is better than none at all;—that he is willing, or that it will better his condition; in the other—there is no single shadow of a plea for sending him to a condition he has fled from—a bondage he has escaped. In the one case—it may not be a man, but an idiot, or a fool—in the other, it is crushing down the manhood of as complete a man as ever God fashioned in his image. In the one case, it may be he knows not the value of freedom, and cares not much for liberty; in the other, he has conquered his freedom and holds on to it,—he has achieved his liberty and asserted his right to be a man. Yes, it is a far deeper crime to re-enslave a man than to enslave him at the first; he who does the latter treads upon a law of nature,—he who dares do the former, tramples upon human nature itself.

From all that has now been said, the conclusion

is plain, that nothing can sanction or legalize injustice; in other words, that no law subversive of natural right has any binding obligation. All the laws we have just enumerated under this head seem to come clearly within the category of unjust laws; and to every man so believing, disobedience to them is a duty.

To these views, we are fully aware that numerous, and at first sight formidable objections may be urged. We propose to examine, in order, all of these which suggest themselves.

1. It is objected, that, as constituent members of the State, we are bound to obey all its laws, when called upon, and if we cannot conscientiously obey its unjust laws, we must take care not to be called upon (*i.e.*, keep out of the way of the law), or, if we cannot do this, we must quit the country. We have heard a number of persons, in debating what should be done in case of being called upon to assist in executing the Fugitive Slave Law, say that they should "run away as fast as possible." This seems to us to be a very short-sighted kind of sense, if not indeed quite ostrich-like,—for the theory in our country is that the law is brought to every man's door,—and the presumption is, that in case of a running-away to evade the law, the law can run at least as fast and as far as we can. It is a poor subterfuge to think that we can escape the responsibility of upholding the law by "running away" when called upon to

execute it. This course only ends in making fugitives of freemen as well as slaves,—the one fugitives from labor, the other fugitives from law. Let a man first make sure whether it is his duty to obey the law ; if he decides yes,—then let him do manfully and like a “good citizen” what he deems to be his duty, even though it be a “disagreeable duty.” Is it not his business to “conquer his prejudices,” and put away all “squeamishness” and “sentimentalism”? One would think that these “law-abiding” citizens who pride themselves so much on their faith in the statute book, could “abide” by the law long enough to see it executed. Yet these very men, when it comes to the pinch, are the first to flinch from the “duty,”—to “run away,” or pass by on the other side. True it is that men have more manhood in them than their theories of government would lead you to think ; true it is that few can be found willing to turn slave-catchers at the bidding of the law. But what manikins they are, after all ! Why, they religiously believe (or pretend to), that it is their bounden duty to actively obey this law ; it is *their* “Higher Law,”—the only law they know ; they prove to you that by the most sacred obligations they owe it duty and obedience,—and yet, when it asks them to act out their words, straightway “conscience make cowards of them all,” and not one of them has the pluck to do his “duty.” Fie upon such weakness ! ’Tis time we had learned that it *never can* be our duty to obey un-

righteous laws, to crush our consciences, or perform impossibilities.—Man's duty *he can do*,—these men do it,—keep their conscience and break the laws,—their *pretended* duty, to keep the law and break their conscience,—no man makes out to compass that. Strange that men should so invert the true relations of duty. Man's duty it is always in his power to do,—*else it were not duty*,—and the man who both cannot and will not do his duty, when he knows it, had better have done with pretending to be a man.

The second alternative proposed to us in the case of unjust laws is to “quit the country.” So long as you stay in the country, it is said, you receive the protection of the government, and must obey *all* its laws; the moment you refuse to obey, you forfeit this protection, and should take yourself away where you can conscientiously keep the laws, and so merit the rights of citizenship.

To say nothing of the very doubtful policy of leaving the “freest and most enlightened country on the globe,” in the hope of finding a better, or of the risk we might run of leaping “from the frying-pan into the fire,” it may be answered that this course is the worst that could be followed, both for the country and the citizen. If my country is wrong, it is my duty to try and right her. I owe her this devotion, and she owes me her protection,—not for obeying her laws, right or wrong, but for striving as a faithful citizen to secure her prosperity by securing justice in her

affairs. Grant that the ship of state has sprung a leak or two, and is somewhat infested with rats; the duty of the true and loyal seaman, is not to quit the ship, or by ignoring her imperfections, to jeopardize her safety; it is our duty to "stand by" and try to stop the leaks, and drive out the rats,—not keep the knot-holes to swear by, and the rats to worship.

If a majority of my countrymen pass a law to kill all the deformed people in the land, and make it my duty to aid in doing it,—must I run away to teach Christianity to the Hottentots or Patagonians, and leave my "Christian" countrymen to persevere in crimes before whose enormity the barbarities of heathenism dwindle into insignificance?

2. It is very commonly alleged that the only proper remedy against an unjust law is *repeal*, and that the ill results of disobedience are so serious as to render it best to obey even a bad law, so long as it remains law, while we labor by all the means in our power to promote its repeal.

However plausible this may seem at first, a little close inspection will suffice to show that it is a sample of logic inverted, and common sense upside down. To talk of repealing a law as soon as it is passed, overlooks the fact, that a majority of the law-making power are in favor of it, and are very unlikely to undo their own work, until compelled by the irresistible voice of the people. The fact that the law is passed is presumptive evidence

that there is a majority in its favor. Repeal is a work of time,—it requires agitation, opposition, election, party-machinery, before it can be effected. Meanwhile, if you are to keep on obeying the unjust law, while working against it all the while, is it not plain to see that your example contradicts your precept, your life gives your principles the lie? What is the use of preaching up justice, of talking against an unjust law, when, by your every act of obedience to the unjust law, justice receives a fatal stab? Truly, it is a beautiful way of getting an atrocious law repealed, to keep on obeying it all the while! A likely plan to rid us of injustice, to keep doing it ourselves! An excellent and pious method of serving God, to keep on good terms with the devil! Because an unjust law comes along, we must first obey it because it is law, and then repeal it because it is unjust. Because iniquity is established by statute, we must keep the statute till we can destroy it, uphold it till it can be overthrown! Such beetle-logic as this, may safely be left to confute itself. Because the majority have resolved to sin, we must go with them and keep on sinning to the end of the chapter, and then turn right about and sin no more, because we have at length succeeded in convincing the majority that we and they are all miserable sinners,—especially we, who knew better, and so add the guilt of hypocrisy to the guilt of the other sin. How vastly reasonable it is thus to keep weaving a web with one hand and pulling it to

pieces with the other, to build a house in the morning, and tear it down at night, to undertake to do wrong rightly, conscientiously obey the law our conscience knows to be wicked, be unjust advocates of justice, be true and false, "loyal and neutral, in a moment!"

But a still more conclusive answer to the objection may be drawn from history. Experience proves that passive obedience never yet repealed an unjust law. To talk of the sacredness of unrighteous laws, and the binding obligation of them, till we can get them repealed, is to deny all experience and to fly in the teeth of facts. The natural method, that which history points out, and reason approves, and justice sanctions, is just precisely the opposite of this. First, the unjust law has been tried,—then its wrongfulness has become apparent to some among the people,—these men thought and reflected, and tried the law by reason and conscience,—next they settled their minds against it and resolved not to obey it,—next they disobeyed it,—next this excited and roused public opinion,—all that could be brought to uphold the unjust law was brought—authority, proscription—sacred obligation;—it was discussed and agitated, and weighed and found wanting,—the friends of justice soon began to outnumber its foes,—the revolution (something which never goes backward) could not be stopped,—the law was disobeyed again, and again, and still again,—every new man in whom justice found a home, added to

the number who would not keep the law,—soon it came to pass that the law could not be executed ;—the law which cannot be executed, must one day be repealed ;—and finally, and after all this preliminary contest, the law was formally and definitively repealed. This is the *actual* method in which the world gets rid of unrighteous laws ; first they are disobeyed and then repealed ; first the people have thrown them aside, and then the legislature have abrogated them because they were thrown aside ; first the law has perished because of justice, and then been buried by statute because it was dead.

All history can scarcely show an instance of the repeal of a law before it was first disobeyed. The opposite doctrine, of passive obedience first and repeal afterward, would have kept alive every wrong, and perpetuated every tyranny since the world began. It would have sanctioned the oppressions of James and the tyranny of bloody Mary. It would have deprived Hampden of all claim to honor, and torn the crown of glory from the brow of Sidney. It would have put a stopper on the English revolution, and kept our forefathers and us their children to this day loyal subjects of the British crown.

3. Men say that however good such reasoning as the above may be against the unjust laws of an absolute government, it cannot hold in a *democracy*, since here every man has a voice in the making of the laws, and has virtually bound himself to

obey them when made.—This reasoning is specious, but not solid.

If, according to the theory, every man has a voice in making the law, and expresses that voice *against* it, instead of for it, (by voting for a legislator whom he believes to be opposed to such laws), then he does *not* bind himself to obey the law he has voted against.—The only ground on which it is possible to place the superior obligation of unjust laws in a democracy, is, that in a republican government, the will of the majority is supreme, and every citizen is bound absolutely to obey that will when enacted into law.

But this argument oversets itself by proving too much,—for, if the will of the majority be the supreme law, irrespective of justice, then there is no wrong or crime which we may not be obliged to do, if the majority so ordain. If the majority of voices be the *only* rule of our conduct, we are given over to as pure a tyranny as any absolute monarchy on the globe. Whether we are bound to do wrong at the popular bidding, or by the fiat of the king, makes but little difference. King People or King James are equal before the bar of conscience. Wrong does not change its nature by becoming popular, any more than injustice is made just by becoming law. The eternal principles of justice depend not on majorities,—the strong instincts of humanity cannot be voted down by numbers. Majority of voices avails nothing in morals,—nor can we be discharged of our duty to con-

science by resolving to keep the law of the dominant party, right or wrong. Grant that all civil power is given to Congress, so that whatever Congress wills, it may do ; yet there are certain things which Congress *cannot* do. All the Congresses of all the world cannot make it your duty or mine to do a murder, or deny our nature, or trip up the heels of a flying fugitive in pursuit of freedom. It is a little strange to hear tyrannical and inhuman laws defended on the ground of *democracy*. Strange that republicans must be bound to do wrong by more stringent obligations than the subjects of kings. Is there no tyranny then in republics? No oppression but that of royal power? No injustice but king-craft? Nay, if men must needs justify passive obedience to unrighteous laws, let them not do it in the name of democracy. Steal not that livery of heaven to serve the devil of slavery in.

This doctrine of the inevitable obligation of all unjust laws in a republic, may be most effectually overthrown by a practical example. Let us divest ourselves of all prejudice in favor of our peculiar views, and look impartially at a case supposed,—and a case as likely to occur as was the passage of the Fugitive Law a year ago.

Suppose, then, that in a republic of Hottentots or of Hindoos, a law is enacted by the legislature, duly elected by the people in democratic form, providing that every white man being, or coming within the bounds of the republic, shall be caught

and reduced to slavery; and making it the duty of "all good citizens" to aid in doing it; and prohibiting, under heavy penalties, all citizens from harboring, helping or concealing, a white man, or aiding him to escape out of the jurisdiction of the law. Suppose, too, that this law is in accordance with the Constitution of the Republic, which, from time immemorial, has "recognized" the inferiority of white men, and "sanctioned" the enslaving of them whenever the law allowed. Suppose, now, that there are two thousand white men within the bounds of the republic, who, in the sleep of the Constitution and the law, have been living as freemen of the soil,—and suppose they are now hunted out, and one after another brought into subjection to the new law, and made slaves for life. Suppose, too, that there are a few men, among the Hindoos, having a little more light, and a little more conscience than the law-makers, who are shocked at this inhuman business, and wish to protect and shelter, or at least to send out of the State these unoffending but devoted men; or, at the very least, do not wish themselves to be the bloodhounds who shall dog them into slavery. The question arises, are they bound to obey this unrighteous and inhuman law, because it is the law of the majority? I think human nature, in white or black, will answer, no! It is better to suffer wrong than do wrong. Let the law take its course and execute itself upon those who disobey it. Their consciences, at least, are clear, and no human law, democratic

or otherwise, can oblige either Hottentot or Christian to violate his conscience.

The true principle everywhere is this :—Republics as well as all other governments, are bounded by the law of nature and justice in their enactments; and to say that every republican law is *ipso facto* supremely obligatory, is to open the door to all manner of wrong and injustice.

4. It is objected that, even granting unjust laws to exist, there is no absolute standard by which to know them, and no individual has a right to set up his judgment in so grave a matter as the obligation of a law. But this is a complete begging of the question, for we are talking all the while of laws known and acknowledged of all men, (at least all the men with whom we argue), to be unjust.

We proceed to answer the latter portion of the objection. We have nowhere claimed the right of disobedience to simply inconvenient laws, or to laws of doubtful expediency, where the common judgment may differ widely. The only cases we have adduced, as not only justifying but demanding disobedience, are extreme and urgent cases, where the highest moral principles are involved, and where the verdict of conscience is quite clear. In such cases, it is obvious that no arbiter but conscience can have jurisdiction of the case. In every question of the obligation of such a law, duty is involved, and where duty is involved, there conscience alone must determine what is duty; and it

is manifest that no conscience but individual conscience can possibly determine it. No man, or body of men, can decide my duty for me,—no Congress can be a conscience to any but itself. If it is said that we cannot set up conscience for a standard, since consciences differ, we reply, neither, by the same token, can you set up Congress for a standard, because Congresses differ. It is a weak argument which refutes itself, by proving just twice too much.

But it will be found in practice, that in regard to really unjust laws, consciences do not differ so much after all. In minor matters, they may widely differ, but in the case we are treating, of a flagrantly unjust or inhuman law, they beat in pretty fair unison, they tell very much the same story. Whatever theory of human nature we may hold, we must admit the existence of the moral sentiment in all men. Even the most strenuous believers in total depravity recognize a conscience in the most abandoned of mankind, and appeal to it with the motives and sanctions of religion. Now, this conscience is no such fluctuating and evanescent thing as many would have us believe. It may be warped by interest, or blinded by passion, or seared by custom; but it is still there, and in nearly every instance where *humanity* is involved, and conscience becomes the arbiter of duty, it decides peremptorily for the right. This is no mere assertion,—it is borne out by all experience, and is but a natural corollary from the fact that all men

have hearts and consciences and human feelings. It is no dogma of the schools, but a fact founded on human nature. Ask the traveler from South Wales, or the jailer at Sing-Sing, and they will tell you that humanity is not the monopoly of the few, but the possession of all, even of the savage and the criminal.

Now, in cases like those supposed—of a law contrary to humanity, or subversive of the law of nature—the conscience of the community is rarely for any length of time seriously wrong. In a wide intercourse with men of all modes of thinking at the north, we have yet to find one willing to say he would aid in executing the Fugitive Slave Law. We appeal to every reader if his experience is not to the same effect. Now, it is only to generalize the feeling of all the individuals who make up the community, (with a very few exceptions,—probably about as many as would consent to steal a sheep,) and no one can claim that we proceed on too narrow an induction in saying that the public conscience—which is but the aggregate of individual consciences—is against the execution of this unjust law.

The argument that, in matters of law, we have nothing to do with conscience, is too atheistic to require an extended refutation. If we are to surrender our morality when we come to politics, we had better surrender our souls before we come to manhood. If we are to deify the law, we had better first renounce our allegiance to God. It is

high time that the notion that political matters are mere questions of expediency, was exploded out of the heads of all decent citizens, to say nothing of true Christians. Politics are *national morals*, and the nation which does wrong by statute is amenable to the same standard as the individual who does wrong by will. We cannot put off our moral responsibility by shouldering it upon the majority; we cannot get rid of our consciences, if we would. To say that "conscience has nothing to do in politics," is as monstrous a falsehood as the old maxim that "reason in religion is of unlawful use." The one is the unfailing refuge of bigotry and superstition; the other is the perpetual argument of demagogues and tyrants. It was a fine sense of natural justice which extorted from Napoleon the confession,—“My dominion ends where that of conscience begins.”

5. We are told that we have no right to call in question a law which is made in fulfillment of the Constitution, and that to assert that such a law is unjust, and therefore not binding, is to overthrow the Constitution itself.

Let us suppose, for argument's sake, (what is not true in reference to the Fugitive Law), that a certain law is constitutional; it does not follow that it is therefore just or binding. Constitutions do not *create* justice, but are founded, or claim to be founded, upon it. If it is said that the Constitution has been from time immemorial the supreme law of the land, we answer that justice was before

the Constitution, and its claims are not only prior, but more sacred. Constitutions are made by men, but conscience is a creature of God. A constitution is subject to time and change, but justice is unchangeable and eternal. Besides, supposing the Constitution to sanction or ordain injustice,—the Constitution was but a compact made by our fathers, and however binding upon them, they could not guarantee that their descendants, to the remotest generation, would consent to perpetuate the injustice. It is a principle in law that all immoral contracts are *ipso facto* void. Is our fathers' compact to do wrong more binding than our conscience to do right?

But again, even supposing it true in theory that the Constitution is the supreme law, yet in practice we find it overruled by the veriest trifle at the will of the people or the Congress. The nation wanted Louisiana, and President Jefferson openly and avowedly violated the Constitution to purchase it; the nation, or a portion of it, wanted Texas, and Texas was annexed by "joint resolution," in plain defiance of the Constitution. The acutest constructionists of the Constitution can find in it no power for creating banks, or making internal improvements,—yet Congress has repeatedly ordained the one, and established the other. Talk of the sacred supremacy of the Constitution, and the danger of "sapping the foundations of the Union," when the Constitution has been violated over and over again, and the country has

coolly acquiesced. Hardly an article in the Constitution but has been either evaded or openly violated a host of times. The South violates it as often as she pleases, and yet the Union stands. She jails our citizens unconstitutionally and unjustly too, and yet the world rolls on, and nobody thinks the Union or the Constitution in any danger. But let a few fugitives be helped to freedom by the North, and straightway solemn warnings and doleful cries are ringing all abroad of "union," and "safety," and "anarchy," and "treason," and "our sacred Constitution," and "our glorious Union." It is an old story, and is becoming somewhat stale. It is enough to say that the cry has always been heard until the South got what she demanded, and then it has been hushed. The reason it is now prolonged is, that her demand takes "too much blood" away with the pound of flesh. The reason is, that the North is found to be not quite soulless after all. No doubt the cry will be continued, but let every man remember the Higher Law, and never fear that the South will dissolve the Union because a little justice occasionally gets done at the North.

This notion of the binding infallibility of Constitutions, irrespective of all justice, is nearly as baseless as that of the binding obligation of all laws. General Jackson stated the true doctrine, when he said that every man, when he takes an oath to support the Constitution, means to support his understanding of it. Every Constitution is

imperfect, and it is expecting quite too much of human dullness to claim that men shall go on forever copying their fathers' errors.

If it is said that this view virtually destroys the Constitution, and leaves us without chart or compass, we reply that the advocates of the supreme obligation of Constitutions, irrespective of their justice, must embrace one or the other horn of this dilemma (and either of them is equally fatal to their doctrine), viz. :—Either a people must be governed by their own present sense of truth and justice, or they must not. The last of these suppositions, it is obvious, cannot be maintained, except upon the unequivocal principles of tyranny. The first leads us at once to the ultimate fact which we have all along asserted, viz.,—The people is greater than the Constitution. If you say, then let the Constitution be constitutionally amended by the people, the same answer must be given as in the case of repealing unjust laws, already noticed ; amendment is a work of time, and must necessarily and unavoidably begin with disobedience.

When will men learn that infallibility is forever impossible to man ; that there is, and can be, no stereotyped rule of action prescribed beforehand for all cases ; that each day brings with it quite new and original relations, and must be judged on its own merits, or it will be misjudged.

If it is asked :—Would you then destroy all constitutions and all laws, and leave men only to conscience and common sense for their rules of

action? We answer, No; we would only set men to thinking in order to improve their institutions, to purify their laws. We would show the necessary limitations of the law; we would see what it cannot do, as well as what it can. We would prove that the law is made for the sake of justice, not justice for the sake of the law. We would lead men to look into the foundations of their laws, that so they may build them better and more secure. Before any laws were, men were; no rule of action can antedate reason or common sense, or make that which was wrong before, right now. That many cases do occur for which there is no law, is too plain to need an argument. The whole history of jurisprudence is but a record of the vain and futile effort of the law, to keep up with the progress of the fact. We would only show that justice, and reason, and common sense, are the primal sources of which laws are but the issues; and when the law fails, as it must often inevitably do, we would point men to that universal law-giver whose fiat only are supreme. No; it is not to annihilate the lower law that we would proclaim the Higher; it is but to define the bounds where the lower ends, and the Higher begins.

No doubt it will be pleaded in mitigation of the judgment against unjust laws, that perfection is, of course, impossible in human things, and that the most that can be expected is an approximation to justice; and the answer is as plain as it is con-

clusive, that so, also, the most that can be expected is an approximation to obedience.

6. We come now to the grand Coryphæus of objections to the Higher Law, viz.: That it tends directly to subvert all laws, and overturn all government, and must sooner or later end in anarchy. If this were true, we should be among the last to advocate a principle which leads to such deplorable results.—But it is not true.

If we have proved anything at all in the course of our argument, it is that the only sanction which a law can have, is its justice. Now, if the case stands thus with the law, that its only claim to be obeyed is that it is just, then disobedience to *unjust* laws, so far from subverting law, tends directly to establish it, by honoring in the highest degree the only true source of its claims,—viz., justice. In fact, the only real upholder of the law, is he who strenuously opposes an unjust law,—since, as all men hold, justice lies at the foundation, and if it be not there, the superstructure must sooner or later totter and fall. He who blindly and passively obeys all laws, right or wrong,—just or unjust,—is not the friend of law,—but of arbitrary rule and tyranny. It is a sheer absurdity to say that because one unjust law is set at naught, all the just ones are overthrown. So far from this, it can be proved that every act of obedience to unjust laws tends to weaken the foundations of all law, by perpetuating those which cast a stain upon the statute book, and inducing men

to think lightly of a power which ordains wrong. For it is not possible to serve justice and injustice together ; it is not in nature to respect the wrong, and yet reverence the right.

If it is said that should I disobey an unjust law, another man will disobey a just one, I reply, so much the worse for him. If he cannot see the difference between right and wrong, it is no reason why I should refuse to see it, or to act upon it when seen. Men talk much and foolishly of the evil effects of example, as if a good example were accountable for every bad thing done in its name. Shall I be afraid to do right to-day, lest my neighbor do wrong to-morrow? Must I stand forever balancing between right and wrong, fearful of doing right lest a greater wrong should follow? Must I be the slave of circumstance and expediency, and only do just so much justice, as, on a cool calculation of chances, will, in my opinion, lead to no ill consequences? Away with such temporizing and such paltering! Where truth and justice and duty stand on one side, and example and precedent and expediency on the other, we have simply nothing to do with consequences. If I am too timid to walk uprightly lest my weaker neighbor stumble and fall, I had better at once renounce the responsibility of living, and quit a world in which it is so dangerous to do right.

This plea of the abuse by bad men of the liberty of good ones, is fit only to be used by Jesuits and knaves. He who will not do good lest evil

come, is the very man to do evil that good may come.

Again, let the theory of the ill results of disobedience be what it may, all experience proves that in practice it is no very dangerous thing, after all. The man who will most strenuously disobey every unjust law, because he has too much conscience to do wrong,—is the very man of all others who will most religiously obey every just one,—and for the very same reason. Who so scrupulous in his observance of Custom House and civil laws, as the Quaker, who will not, for penalties or prisons, give up his conscience to obey the military laws? And everywhere it will be found that the opponents of injustice are invariably the best and most valuable citizens the State can show. It would be strange if it were not so; strange indeed, if men who are so anxious to do right at every hazard, should wrong or injure the State at last. Time brings all things out correct,—and no good law ever suffered yet because a just man refused to keep a bad one.

One would think that the same conclusion could be reached without the help of experience to prove it. For what is the whole theory and object of government, from foundation to cap-stone, but an endeavor to realize justice? Our trial by jury is only twelve men in pursuit of justice. Justice between man and man is the very thing aimed at, and if the law contradicts justice,—as it is acknowledged it often does, why, what harm

can follow from justice stepping in and taking the place of the law? It will do this spontaneously, if only men think rightly,—and, as we have already shown, in questions of humanity, in those extreme necessities where only there is call for conscience to interpose,—they generally do think rightly.

At all events, the principle holds good, that nothing but justice at last satisfies everybody, and if justice be done now without the law, the law will by and by come in to sanction it. Do we then make void the law through justice? Nay, we establish the law.

Such is a brief outline of the arguments that may be drawn from Reason in support of the Higher Law.—To such as are accustomed to settle most questions by *Authority*, they may seem to be inadequate. Fortunately, however, we are not left without authority of the highest kind to fortify our reasons. We quote at random a few of the expressions we have found upon the pages of those whom the respect and reverence of modern times have enshrined among the high priests of the temple of Justice.

Says BLACKSTONE, *On the Nature of Laws in General*:

“The Law of Nature, being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times; no human laws are of any validity, if contrary to this; and such of them as are valid, derive all their force, and all their authority, mediately or immediately, from this original.”

LORD BROUGHAM says :

"There is a law above all human enactments, written by the finger of God on the heart of man."

FROM MONTESQUIEU—*Spirit of Laws* :

"Before laws were made, there were relations of possible justice. To say that there is nothing just or unjust but what is commanded or forbidden by positive laws, is the same as saying that before the describing of a circle, all the radii are not equal.

"We must therefore acknowledge relations of justice antecedent to the positive law by which they are established.

"Antecedent to all political and civil laws, are the laws of nature."

SAYS LORD BACON :

"As the common law is more worthy than the statute law, so the law of nature is more worthy than them both."

BURKE, in his *Speech on the Trial of Warren Hastings*, uses the following language :

"We are all born in subjection, all born equally, high and low, governors and governed, in subjection to one great, immutable, pre-existent law,—prior to all our devices, and prior to all our contrivances,—paramount to all our ideas, and all our sensations,—antecedent to our very existence, by which we are knit and connected in the eternal frame of the universe, out of which we cannot stir.

"This great law does not arise from our conventions and compacts; on the contrary, it gives to our conventions and compacts all the force and sanction they can have; it does not arise from our vain institutions."

SAYS SIR JAMES MACKINTOSH :

"The law of nature is a supreme, inviolable, and uncontrollable rule of conduct to all men. It is discoverable by natural reason; its fitness and wisdom are founded on the general nature of human beings, and not on any one of those temporary and accidental situations in which they may be placed."

So also CICERO ;—we translate from the *De Republica* :

“For, indeed, the true law is right reason, agreeing with nature, extending over all things, constant, everlasting,—calling us to duty by its commands, deterring us from crime by its prohibitions. To this law neither can anything be added, nor is it lawful to take anything away. Nor can it be totally abolished. Neither by the Senate or the people can we be absolved from this law ; nor can it be one law at Athens, another at Rome, but it will govern all nations through all time, as an eternal and unchangeable law ; of which law, God being the author, the man who will not obey it, flees from himself, and renounces the nature of a man,—and by that very act suffers the highest penalties.”

Lord COKE laid it down as a principle, that—

“The common law doth control acts of Parliament, and adjudge them void, when against common right and reason.”

In the case of *Day vs. Savage*, Lord Chief Justice HOBART decided that—

“An act of Parliament, made against natural equity, is void in itself, for *jura nature sunt immutabilia*.”

From LIEBER'S *Political Ethics*, (a work recommended by Chancellor Kent, in his Commentaries on American Law, as “excellent in its doctrines, and exhibiting with great force, the reason and necessity of the application of the principles of ethics to the science of politics,”)—we make the following extracts :

“Though some ancient and modern writers have maintained that no right exists antecedent to the magistracy, it is nevertheless true that the reality and truth of natural law can be scientifically established with as much certainty as that of other sciences.”

“The state does not make right, but is founded upon it ; constitutions do not create liberty.”

“Not that I am guilty of the egregious folly of believing that everything in the state is good ; that the authorities established

by the state may not sanction unwise, bad or wicked things; but the state, as the chiefest of human unions, deserves each man's faithful devotion, to serve where it is right, to improve where it is wrong."

"All immoral laws are, *ipso facto*, invalid, be they customary or not. The state, or any authority, cannot require an immoral act, or permit a crime."

Says BLACKSTONE, *Commentaries on Law* :

"Nay, if any human law should allow or enjoin us to commit murder, we are bound to transgress that human law, or else we must offend both the natural and the Divine."

From CICERO, *De Legibus* :

"It is a most foolish (*stultissima*) notion to suppose that everything established in the institutions or laws of a people is just."

"We ought not to separate the science of public law from that of ethics, nor encourage the dangerous suggestion that governments are not so strictly bound by the obligations of truth, justice and humanity in relation to other powers, as they are in their own local concerns."—CHANCELLOR KENT, *Commentaries on American Law*.

Says Mr. Justice COLERIDGE :

"The practical conclusion is, that disobedience is always presumptively wrong in morals,—though it may be justifiable in the case supposed,—of a contradiction between Divine and human laws."

"That we are bound to disobey every human law which allows or enjoins us to commit a breach of the law of nature, will appear indisputable if we reflect that such a law will promote the misery of man so long as he retains the nature with which he is at present endowed.

"It would be too absurd for the most strenuous advocate of passive obedience and non-resistance to contend, that any rule

prescribed by the supreme power in a state, having these characteristics, ought to be obeyed by any rational or responsible being.”—WENDELL, in *Notes to Blackstone*.

Says WAYLAND, in his “*Moral Science* :”

“Passive obedience, in many cases, would be manifestly wrong. We have no right to obey an unjust law, since we must obey God at all hazards.—It is manifest that passive obedience cannot be the rule of our conduct.”

“THOSE RIGHTS THEREFORE, WHICH GOD AND NATURE HAVE ESTABLISHED, AND ARE THEREFORE CALLED NATURAL RIGHTS, SUCH AS ARE LIFE AND LIBERTY, NEED NOT THE AID OF HUMAN LAW TO BE MORE EFFECTUALLY INVESTED IN MEN THAN THEY ARE ; NEITHER DO THEY RECEIVE ANY ADDITIONAL STRENGTH WHEN DECLARED BY THE MUNICIPAL LAWS TO BE INVIOLENT. . . . ON THE CONTRARY, NO HUMAN LEGISLATURE HAS POWER TO ABRIDGE OR DESTROY THEM, UNLESS THE MAN SHALL HIMSELF COMMIT SOME ACT THAT AMOUNTS TO A FORFEITURE.”—BLACKSTONE, *Commentaries*.

Finally, we quote the words of THOMAS JEFFERSON, in the *Virginia Resolutions of 1798*, much talked of, but little read, and less regarded,—before whose lofty spirit and comprehensive principles, the debilitated democracy of our day should hide its diminished head.

“*Resolved*, That this Commonwealth is determined to submit to undelegated and consequently unlimited powers in no man or body of men on earth ; that these, and successive acts of the same character,* unless arrested on the threshold, may tend to drive these states into anarchy and blood, and will furnish new pretexts for those who wish it to be believed that man cannot be governed but by a rod of iron. That it would be a danger-

* Referring to the “*Alien and Sedition Laws*,” which afforded almost a perfect parallel, in their inhumanity and rigor toward the friendless, their provisions for summary process, and their denial of the ordinary forms of justice, to the late Fugitive Slave Law ;—and which, like that, were hurried through Congress by a bare majority, unquestionably against the sober convictions of the people.

ous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights ; that confidence is everywhere the parent of despotism ; and this Commonwealth doubts not that their co-states will agree with them in the opinion that the men of our choice have more respected the bare suspicions of the President, than the solid rights of innocence, the sacred force of truth, and the forms and substance of law and justice ; and that their co-states, recurring to their *natural rights*, will concur in declaring these laws *void and of no force* ; and will unite in requesting their repeal at the next session of Congress."

It still remains to notice, in few words, the Scriptural argument, which may properly be regarded as a branch of the authoritative. Whatever theory of the obligation of obedience to law may be drawn from isolated texts of Scripture, it cannot be concealed that the whole weight of practical examples is on the side we advocate.

The first instance we cite is the law of Pharaoh, King of Egypt, commanding all the Hebrew male-children to be slain :—" And Pharaoh charged all his people, saying, Every son that is born ye shall cast into the river, and every daughter ye shall save alive." This was the "supreme law of the land ;" and it was the duty of "all good citizens" to obey it. But we read that, "The Hebrew midwives feared the Lord, and did not as the king of Egypt commanded them, but saved the men children alive. Therefore God dealt well with the midwives." Here were some, at least, it seems, who recognized a Higher Law, and for obedience to it, they had their reward.

Again, when Nebuchadnezzar set up his golden

image in the province of Babylon, and ordained that whosoever fell not down to worship it, should the same hour be cast into a burning fiery furnace—we find the three Hebrew youths telling the king to his face, “O Nebuchadnezzar, we are not careful to answer thee in this matter. Be it known unto thee, O King, that we will not serve thy gods, nor worship the golden image which thou hast set up.” We all know the result.—Though the king was “full of fury,” he was not able to intimidate Shadrach, Meshach and Abednego, nor make them obey the “lower law.”

So also, when king Darius had made an unalterable law, that every man who should ask a petition of any God or man within thirty days, save of the king,—should be cast into the den of lions, we find heroic Daniel, “when he knew that the writing was signed,” goes to his house and prays three times a day with his window up, “as he did aforetime,”—not fearing the power of the law, nor yet the den of lions.

Christ made no scruple of disregarding the rigor of the Jewish laws—telling the high priests to their face that it was lawful to do well on the Sabbath-days—and rebuking the Pharisees for making the commandment of God of none effect by their tradition.

When Peter and John were diligently spreading the new gospel at Jerusalem, we read that “the priests, and the captain of the temple and the Sadducees came upon them, and laid hands

on them and put them in prison." And on the morrow, the authorities being assembled in council, "the rulers and elders, and scribes, and Annas the high priest, and Caiaphas, and John and Alexander, and as many as were of the kindred of the high priest"—examined these "agitators" and "fanatics," who were endangering the "peace" and "harmony" of the nation. And when the "Union and Safety Committee,"—composed of the Pharisees of the Church, and the "Old Hunkers" of the State, had taken counsel together, and decided that the "agitation" should be stopped, they "called Peter and John, and commanded them not to speak at all nor teach in the name of Jesus." What said the apostles to that? "Whether it be right in the sight of God, to hearken unto you more than unto God, judge ye." And again, when they were arrested a second time for breaking the law, they replied, fearlessly, "We ought to obey God rather than men."

But we have a case still more in point. When Ahab was king over Israel, there was a decree against all the prophets of the Lord, that they should be slain. And "all good citizens" were commanded to ferret them out and help the "*posse comitatus*" of the realm to execute the law. And it was death to "harbor or conceal a fugitive" prophet, "knowing him to be such,"—and every man was forbidden to "aid or abet" his escape. But one Obadiah, a man who "feared the Lord greatly," and believed in the Higher

Law, "took a hundred prophets and hid them by fifties in a cave, and fed them with bread and water."—He thought it was best to resist the "Fugitive Law"—and harbored and concealed as many fugitives as he could find,—not fearing the wrath of Jezebel, nor the power of the king.

Nor, if we come down to modern times, do we find the strictest servants of the Scriptures more ready to obey unjust laws than the early saints. The text, "Render unto Cæsar the things that are Cæsar's," did not prevent the English Presbyterians from resisting the laws of Charles the First—nor the Dissenters from exercising their liberty of speech, nor the bishops from protesting against the tyranny of James. The words of Paul—"Let every soul be subject unto the higher powers; for whoso resisteth the power, resisteth the ordinance of God"—did not hinder our Puritan ancestors from acting upon the principle that "Resistance to tyrants is obedience to God."

If men would but remember, that these texts from Paul's Epistle have been quoted to sanction every monstrous stretch of arbitrary power, every act of oppression, cruelty and outrage which darkens the annals of the world, they would be somewhat slow to bring them in as a cloak for American sin and injustice in the shape of law. It is strange that any ministers of Christianity should lend themselves to the work of advocating the lower law at the expense of the Higher.—One blushes to hear from the pulpit, deprecations of

disobedience, and doubts as to the "expediency" of obeying conscience. If our Christianity is only good to make time-servers and moral poltroons, we had better go to Socrates and Cicero for our religion, who at least bade men be conscientious, let what might follow.—Shall it be said that that grand old saying, "*Fiat justitia, ruat coelum*, Let the right be done though the skies come down," although the utterance of a heathen Roman, is a mark above the morality of the church? To what avail then its "noble army of martyrs," its fearless prophets and brave apostles? What boots it that Saint Peter obeyed God rather than men, if his successors teach us to obey men rather than God? Is the church then sunk so low as to pander for crime in the name of law, and preach down conscience in the name of God? Better give us heathenism with conscience, than Christianity without it. Better leave men to the law of nature than teach them in the name of Christ to do to others what they would not for the world that others should do to them. If this is all that Christianity can come to, then surely Christ is dead in vain, and he, who, for obedience to the Higher Law, was put to death by the lower, has shed his sacred blood for naught. But no! 'twere blasphemy to think so meanly of God's goodness as to believe that he will suffer his truth to perish. Let there be a few wolves among the flock; there are yet enough free lips, and Christian, human souls, to keep alive the Christianity of Christ, that

beautiful and sacred brotherhood whose limits are mankind !

Finally, it can hardly be expected of our people,—at least of any general portion of them,—to surrender the rights of conscience, the best established principles of former times, and the strong instincts of human nature, in obedience to such laws as that lately hurried through the forms of legislation. The law which is built on justice, requires but little aid of men to make it binding ; but to such laws as these, justice is a sworn and eternal foe. The law of conscience cannot be set aside by courts, the eternal instincts of humanity cannot be legislated out of men.

The Law of Nature still reigns supreme, whether men set up their puny laws, or pull them down. Not king, nor Congress, nor legislature can nullify that ; not all the votes of all the parties can bear down justice at the last. Sooner or later, the right will have its way. If justice be not done by your laws, 'twill be done in spite of them, for it must and will be done. An unjust law is sure to be set at naught, for conscience cannot be cheated of her rights forever. Talk not to us of Treason. Injustice is the only treason ; no law can legalize it, no constitution can sanction it ; it is null by the older Constitution of Nature, void by the Higher Law of God !

'Tis strange that so plain a truth should need be told ; strange that Justice should need the help

of History, and call on logic for its defence. But so it is, that in the minds of men, reason is dethroned by prejudice, and interest will blind their eyes to justice. To hear the daily talk of men, one would think that no law was ever disobeyed till now ; no act of legislation ever so much as questioned before. Politicians gravely tell us that the Higher Law is treason,—and Divines preach solemn sermons to prove the Statute Book infallibly inspired ! Yet, every day witnesses the breach of laws far more reasonable, and a hundred times as righteous. Men can swear unlawful invoices at the Custom-House,—take unlawful interest,—drive trades unlawfully on Sunday,—make unlawful bets,—rent unlawful brothels,—sell unlawful liquors without license,—yes, vent unlawful oaths against the “ Higher Law,” and who is there that cares a pin ? Men may break all these laws, and more, for the sake of interest, and there is not a dog to wag his tongue ; but let a man disobey an unjust law, for the sake of principle, and the whole land rings with the cry of treason ! The very man who will break every law, human or divine, for the Almighty Dollar, sneers at the “ fanaticism ” of him who keeps the law of Almighty God ! In the hands of a subtle lawyer, working for a fee, the Constitution and the laws are as elastic as India-rubber ; but when the voice of humanity cries out for justice, suddenly they are found to be stereotyped in steel !

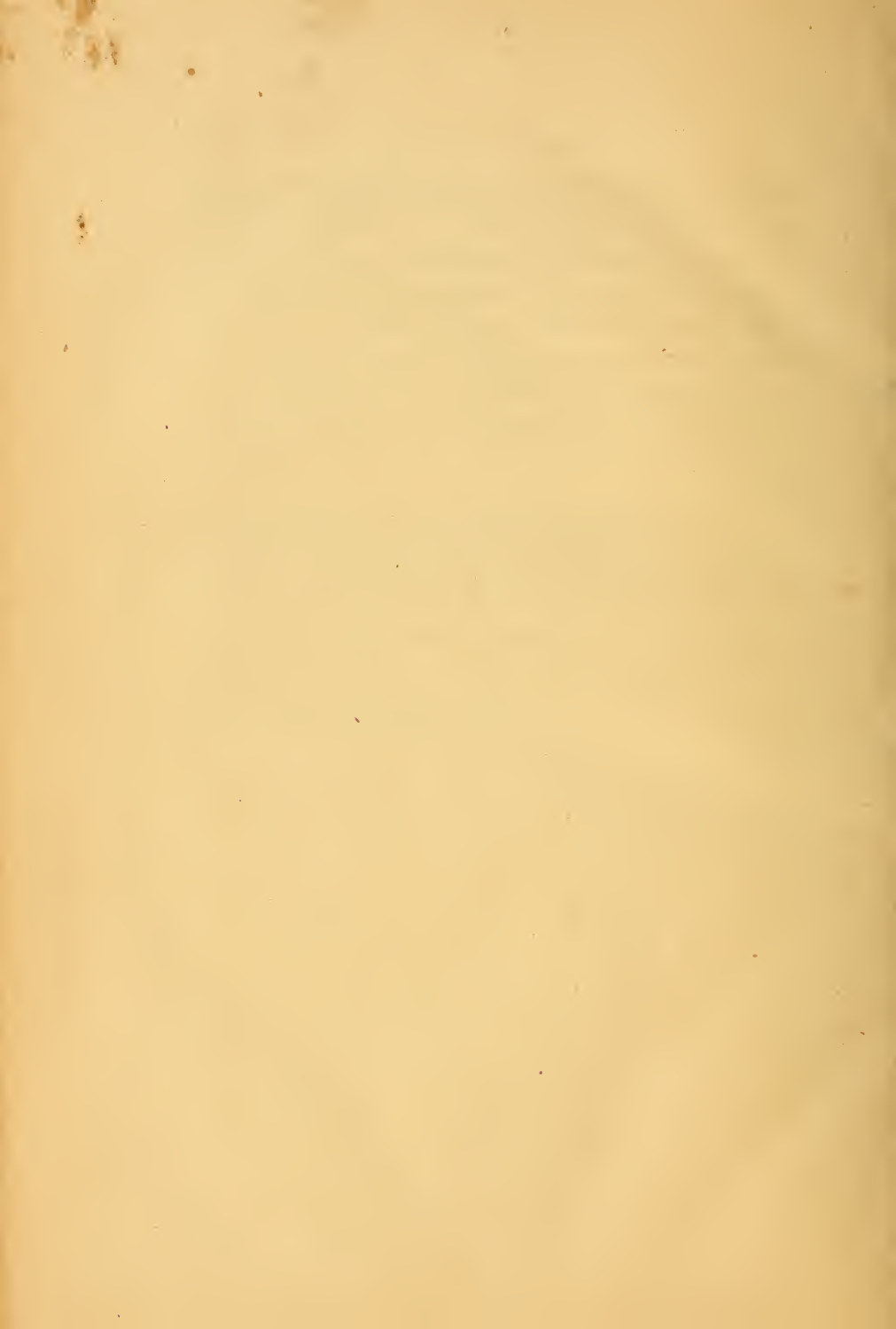
But let no man despair. Justice asks no aid of

mortal men, and God's laws will one day or other execute themselves. The Higher Law is in no danger of being permanently disregarded, nor are its subjects to be frightened from their allegiance by being called bad names. The law which came not from men, depends not on them for its sanction,—it reaches down its feet to the foundations of the universe, and its hand takes hold on the throne of God.

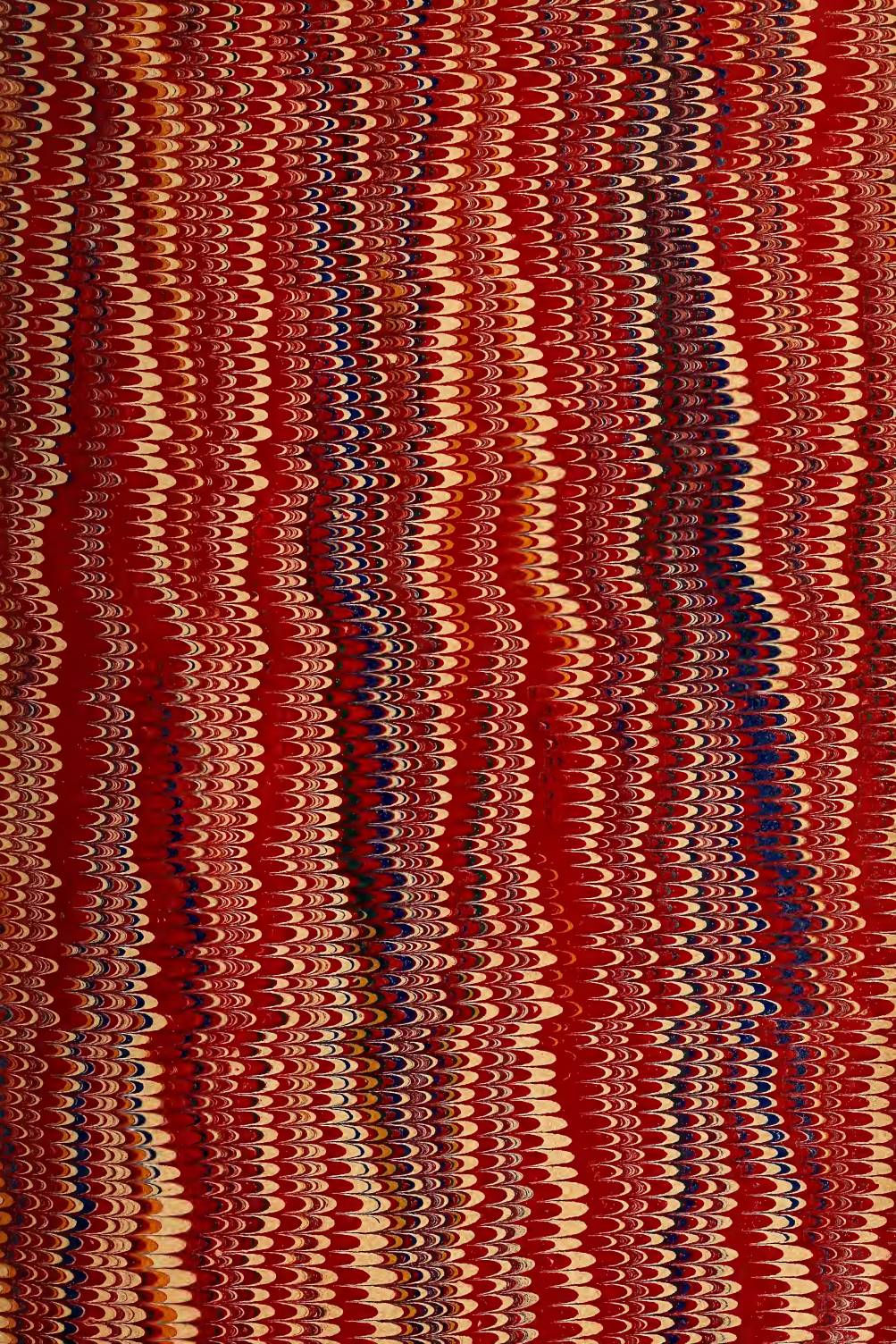
“In the open Book of Nature, Heaven above and Earth below,
We have learned a Higher Statute than the babbling schoolmen know.
God's voice in conscience taught us, as his angels only can,
That the one sole sacred thing beneath the cope of Heaven is MAN.

“That he who treads profanely on the scrolls of law and creed,
In the depths of God's great goodness may find mercy in his need ;
But woe to him who crushes the Soul with chain and rod,
And herds with lower natures, the awful form of God !”









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